

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No:

-----X
MICHAEL SMITH,

Plaintiff(s),

-against-

**THE CITY OF NEW YORK and NEW YORK CITY
POLICE OFFICER CESAR BERMEO (TAX I.D.#
953679) ,**

Defendant(s).
-----X

To the above named Defendant(s)

Plaintiff designates
Bronx County
the place of trial

The basis of venue is
the location of incident

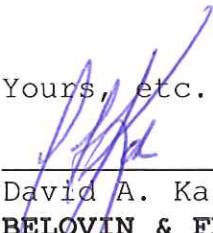
SUMMONS

Plaintiff resides at:
1565 Townsend Ave., B
Bronx, New York 10452

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York
May 15, 2014

Yours, etc.,



David A. Karlin, Esq.
BELOVIN & FRANZBLAU, LLP
Attorneys for Plaintiff(s)
Office & P. O. Address
2311 White Plains Road
Bronx, New York 10467-8106
(718) 655-2900

Defendants' Address:

THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
NEW YORK CITY POLICE OFFICER CESAR BERMEO
Transit Bureau, District 2
Canal Street IND Subway Station
West Broadway/Lispendard Street
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL SMITH,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

**THE CITY OF NEW YORK and POLICE OFFICER
CESAR BERMEO (TAX I.D. #953679),**

Defendants.
-----X

Plaintiff, by and through his attorneys, **BELOVIN & FRANZBLAU, LLP**, as and for a verified complaint, respectfully alleges as follows:

1. At all times herein, plaintiff, **MICHAEL SMITH**, was and still is a resident of the City and State of New York, County of Bronx.

2. At all times herein, the defendant, **THE CITY OF NEW YORK**, was and still is a duly licensed Municipal Corporation authorized to transact business in the City and State of New York, County of New York.

3. At all times herein the defendant, **POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679)**, was duly employed by the defendant, **THE CITY OF NEW YORK**, as a member of the New York City Police Department.

4. Upon information and belief, the defendant, **THE CITY OF NEW YORK**, employed several police officers, including but not limited to **POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679)** and/or other agents,

servants and/or employees, who were herein duly employed and acting on behalf of the defendant within the City and State of New York, County of New York.

5. Prior to the commencement of this action, on or about the 20th day of December, 2013 a Notice of Claim was duly served herein upon the defendants. Thereafter, a municipal hearing was duly held on or about the 17th day of March, 2014. More than thirty days have expired and the defendants have failed and neglected to adjust the claim.

6. Upon information and belief, at all times herein, the defendants, THE CITY OF NEW YORK, by and through it's police officers and/or other agents, servants and/or employees, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679) were acting within the furtherance and scope of their employment with **THE CITY OF NEW YORK.**

7. Upon information and belief, each and all of the acts of the aforesaid police officers and/or other agents, servants and/or employees of the defendant, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), were done by defendants and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, City of New York and the County of New York, and under the authority of the office as Police Officers for New York City.

AS AND FOR A FIRST CAUSE OF ACTION

8. Plaintiff repeats, reiterates and realleges each and every allegation numbered "1" through "7", above as if fully set forth herein.

9. On or about November 1, 2013, on the A Train platform located at West 4th Street, in the City and State of New York, County of New York, the defendants jointly and severally in their capacity as police officers, including but not limited to POLICE OFFICER CESAR BERMEJO (TAX I.D. # 953679) committed **battery** upon the plaintiff when they intentionally and wrongfully touched, grabbed, searched, acted in a threatening manner, threatened, acted menacingly, struck, beat, handcuffed and seized the plaintiff, **MICHAEL SMITH**, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the defendants have legal cause to threaten, touch, grab, strike, beat, search, handcuff, arrest, seize or confine the plaintiff, nor was it privileged by law, and further the plaintiff was aware of such actions, was in fear of said actions and did not consent to such actions.

AS AND FOR A SECOND CAUSE OF ACTION

10. Plaintiff repeats, reiterates and realleges each and every allegation numbered "1" through "9", above as if fully set forth herein.

11. On or about November 1, 2013, on the A Train platform located at West 4th Street, in the City and State of New York, County

of New York, the defendants, jointly and severally in their capacity as police officers, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), committed **assault** upon the plaintiff when they acted threateningly, threatened, acted menacingly, menaced and did place plaintiff, **MICHAEL SMITH**, in imminent fear of physical contact by approaching the plaintiff with their loaded firearms, with their loaded firearms and touching their hand ordered, demanded and required plaintiff to obey improper orders and used other objects and body parts which they used to intentionally, wrongfully and without legal justification, used to physically touch plaintiff, and to seize, assault, handcuff and restrain the plaintiff. All of the above actions placed the plaintiff in imminent fear of physical contact and such contact did occur, clearly showing that defendants had the ability to bring about such contact. At no time did the defendants have legal cause to threaten, touch, grab, search, handcuff, arrest, seize or confine the plaintiff, nor was it privileged by law, and further the plaintiff was aware of such actions, was in fear of such actions and did not consent to such actions.

AS AND FOR A THIRD CAUSE OF ACTION

12. Plaintiff repeats, reiterates and reallges all of the allegations contained in paragraphs "1" through "11" with full force and effect as though set forth at length herein.

13. On or about November 1, 2013, on the A Train platform located at West 4th Street, in the City and State of New York, County of New York, the defendants, jointly and severally in their capacity as police officers, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), without a warrant, order or other legal process and without any legal right, **falsely imprisoned** plaintiff by wrongfully and unlawfully detaining and arresting the plaintiff, restraining the plaintiff, confining the plaintiff, violating his liberty and then taking him into custody. The defendants intentionally confined the plaintiff without his consent and such confinement was not otherwise privileged by law. At all times, the plaintiff was conscious of his confinement and did not consent to same. At no time did the defendants have legal cause to detain, search, arrest, handcuff, imprison, remove or take plaintiff into custody, nor was it privileged by law, and further, the plaintiff was aware of such actions and did not consent to such actions.

AS AND FOR A FOURTH CAUSE OF ACTION

14. Plaintiff repeats, reiterates and realleges all of the allegations contained in paragraphs "1" through "13" with full force and effect as though set forth at length herein.

15. On or about November 1, 2013, on the A Train platform located at West 4th Street, in the City and State of New York, County of New York, the defendants, jointly and severally in their capacity as police officers, including but not limited to POLICE OFFICER CESAR

BERMEO (TAX I.D. # 953679), without a warrant, order or other legal process and without any legal right, **falsely arrested** plaintiff by wrongfully and unlawfully detaining and arresting the plaintiff, restraining the plaintiff, confining the plaintiff, violating his liberty and then taking him into custody. The defendants intentionally arrested the plaintiff without any legal right to do so and such arrest was without his consent and such arrest and confinement was not otherwise privileged by law. At all times, the plaintiff was conscious of his arrest and confinement and did not consent to same. At no time did the defendants have legal cause to detain, search, arrest, handcuff, imprison, remove or take plaintiff into custody, nor was it privileged by law, and further, the plaintiff was aware of such actions and did not consent to such actions.

AS AND FOR A FIFTH CAUSE OF ACTION

16. Plaintiff repeats, reiterates and realleges all of the allegations contained in paragraphs "1" through "15" with full force and effect as though set forth at length herein.

17. Defendant, THE CITY OF NEW YORK, at all times relevant, duly appointed and employed several police officers, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), who were at all times, acting in their capacity as police officers.

18. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances,

regulations, policies and customs and usage of the State of New York and/or City of New York.

19. Plaintiff, MICHAEL SMITH, is and has been at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

20. The defendant, THE CITY OF NEW YORK, is a municipality duly incorporated under the laws of the State of New York.

21. On or about November 1, 2013, the defendants, armed police, while effectuating the seizure of the plaintiff, MICHAEL SMITH, **committed civil rights violations** more fully set forth herein and did detain, arrest, imprison, search, seize, assault, commit a battery upon and grab the person of the plaintiff without a court authorized arrest or search warrant and without probable cause. They did physically seize and strike the person of the plaintiff during the improper arrest process in a unlawful and excessive manner. The plaintiff was falsely imprisoned, arrested, assaulted, battered and maliciously prosecuted without the defendants possessing probable cause to do so.

22. The plaintiff was in fear and aware of such actions of the police officers and did not consent to same.

23. The above action of the defendants resulted in the plaintiff being deprived of the following rights under the United

States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process.

24. The defendants subjected the plaintiff to such deprivations, either in a malicious or reckless disregard of the plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

25. At no time did the defendants have legal cause to detain, arrest, imprison, touch, assault, batter, grab, search, strike, handcuff or seize the plaintiff, nor was it privileged by law, and further the plaintiff was in fear of such actions, aware of such actions and did not consent to such actions.

26. Upon information and belief, each of the defendants, separately and in concert engaged in illegal conduct herein mentioned to the injury of the plaintiff and deprived plaintiff of the rights, privileges and immunities, secured to the plaintiff by the constitution of the United States, and Federal Laws of the United States. The defendants, in assaulting, battering, striking,

imprisoning and arresting the plaintiff deprived the plaintiff of his constitutional rights and annuities secured by the United States Constitution and freedom from illegal seizure, illegal search, fear from legal detention, coercion and intimidation, all secured by the Constitution of the United States and 42 United State Code Section 1983. The defendants acted knowingly and purposely with the specific intention to deprive the plaintiff of his aforementioned rights.

27. Upon information and belief, that all the actions set forth herein by various officer of the New York City Police Department, New York County, constitute a continuing pattern of harassment toward plaintiff, demanding the compensation of significant damages and punitive damages, as plaintiff's life has been extremely disrupted by this constant pattern of abuse.

28. Upon information and belief, the actions and conduct described herein by New York City police officers including but not limited to **POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679)**, and the New York City Police Department, constituted and demonstrates an official unconstitutional policy and custom of abuse and misconduct by the New York City Police Department, and New York City Police Officers, including but not limited to **POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679)**, constituted a continuing pattern of abuse and misconduct by the New York City Police Department, New York Police Officers, including but not limited to **POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679)** and said misconduct by the New York City Police

Department and said misconduct and official unconstitutional policy caused plaintiff to be subjected to and deprived his constitutional rights.

29. The direct and proximate result of the defendants acts are that the plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain, suffering loss of liberty, loss of enjoyment of life and humiliation, all to his detriment.

AS AND FOR A SIXTH CAUSE OF ACTION

30. Plaintiff repeats, reiterates and realleges all of the allegations contained in paragraphs "1" through "29" with full force and effect as though set forth at length herein.

31. Defendant, THE CITY OF NEW YORK, has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure, especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, has failed to ensure that its police officers only use reasonable, necessary and responsible force to effectuate an arrest and ensure that the arrest should be based on probable cause.

32. The defendant, THE CITY OF NEW YORK, was negligent by failing to implement a policy with its police department and instruct police officers who, absent the consent of the plaintiff (and of similarly situated individuals) or without the possession of a court

authorized arrest or search warrant, said police officers of the City of New York are not to arrest individuals such as the plaintiff here where probable cause is lacking and the use of force should only be used when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.

33. The defendant, THE CITY OF NEW YORK, is negligent due to its failure to implement a policy with its Police Department and/or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the plaintiff herein can be arrested.
2. Force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

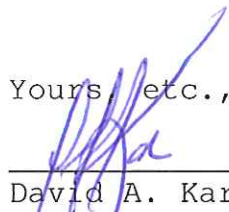
34. The foregoing acts, omissions and systemic failures are customs and policies of THE CITY OF NEW YORK, which caused the police officers, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), to falsely arrest, imprison, maliciously prosecute, seize and confine illegally, unlawfully search the plaintiff, commit an assault/battery to his person and deny him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

35. On or about November 1, 2013, on the A Train platform located at West 4th Street, in the City and State of New York, County of New York, the defendants, jointly and severally in their capacity as police officers, including but not limited to POLICE OFFICER CESAR BERMEO (TAX I.D. # 953679), without a warrant, order or other legal process and without any legal right, unlawfully imprisoned plaintiff by wrongfully and unlawfully arresting the plaintiff, restraining him, confining him, violating his liberty, assaulting him, committing battery upon him, and then taking him into custody. All such actions of the defendants were done intentionally, plaintiff was in fear of such actions, plaintiff was aware of all such actions, plaintiff did not consent to any such actions and none of the defendants' actions were privileged by law.

WHEREFORE, plaintiff demands judgement in each cause of action against all defendants, in an amount which exceeds the jurisdictional limits of all lower Courts, together with punitive damages, together with costs, interest and disbursements of this action, together with attorney's fees, together with such other and further relief as this Court deems just and proper.

Dated: Bronx, New York
May 15, 2014

Yours, etc.,



David A. Karlin
BELOVIN & FRANZBLAU, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
2311 White Plains Road
New York, New York 10467-8106
(718) 655-2900


ATTORNEY VERIFICATION

State of New York)
 : ss.:
County of Bronx)

The undersigned, an attorney admitted to practice in the Courts of New York State, shows that the deponent is the attorney of record for the Plaintiff(s) in the within action; deponent has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true. This Verification is made by deponent and not by Plaintiff(s) because Plaintiff(s) are without the county wherein deponent maintains his offices. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: independent investigation, records, papers and documents in the file, conversations, communications and correspondence with the Plaintiff(s).

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: Bronx, New York
 May 15, 2014



DAVID A. KARLIN